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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS MONTGOMERY, and the
MONTGOMERY FAMILY TRUST,

3:06-CV-00056-PMP-VPC
Base File

3:06-CV-00145-PMP-VPC

v.

**OBJECTIONS OF NON-PARTY
DEBORAH A. KLAR TO THE AUGUST
7, 2009 MINUTE ORDER OF
MAGISTRATE JUDGE [DOC. #1114]**

ETREPPID TECHNOLOGIES, L.L.C.,
WARREN TREPP, and the UNITED STATES
DEPARTMENT OF DEFENSE,

(Expedited Treatment Requested)

AND ALL RELATED MATTERS.

Deborah A. Klar ("Ms. Klar"), by and through counsel, Gary R. Goodheart, Esq., of Jones Vargas, pursuant to 28 U.S.C. § 636(b) and Local Rule IB 3-1(a), submits her written objections to the minute order dated August 7, 2009 re evidentiary objections (Doc. 1114) (the "Minute Order") entered in Case No. 3:06-CV-00056-PMP-VPC, *Montgomery v. ETreppid et al.*, (the "Trade Secret Litigation") by United States Magistrate Judge Valerie P. Cooke.

Pursuant to 28 USC § 636(b)(1)(A), "a judge of the court may reconsider any pretrial matter" heard and determined by a magistrate judge "where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." *See also* Local Rule IB 3-1(a).

These objections are based upon the memorandum of points and authorities below, all

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1 papers and exhibits on file herein, and any oral argument this Court sees fit to allow at a hearing on
2 this matter.

3 Dated this 17th day of August, 2009.

4 JONES VARGAS

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ATTORNEYS FOR DEBORAH KLAR

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 On July 1, 2009, Ms. Klar filed a motion (Doc. # 1106) requesting that the Court rule on the
14 evidentiary objections filed and served on May 13, 2008 by Liner Yankelevitz Sunshine &
15 Regenstreiff LLP ("Liner") (Doc. #601) ("Liner Evidentiary Objections") in response to the Motion
16 for Sanctions which was the subject of the now-stayed order of Magistrate Judge Valerie P. Cooke
17 dated March 31, 2009 (Doc. # 985). In response to Ms. Klar's motion, Magistrate Judge Cooke
18 issued a Minute Order on August 7, 2009 (Doc. # 1114) stating that Michael Flynn shall have until
19 August 21, 2009 to respond to the Liner Evidentiary Objections filed more than a year ago. The
20 Minute Order further states that "[a] reply, if any, shall be filed on or before Monday, August 31,
21 2009." It is respectfully submitted that Magistrate Judge Cooke's Order is clearly erroneous and
22 contrary to law for at least the following reasons.

23 First, the Liner Evidentiary Objections were filed on behalf of the Montgomery Parties,
24 including Dennis and Brenda Montgomery. Both have filed for bankruptcy. The automatic stay, in
25 section 362(a) of the Bankruptcy Code, is the bankruptcy equivalent of a temporary injunction
26 against virtually all creditor activity that might have the effect of advancing the creditor's interest at
27 the expense of the debtor or property of the debtor's estate. Michael Flynn is a creditor of Dennis
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1 and Brenda Montgomery. Accordingly, it appears that the Minute Order was entered in violation of
2 section 362(a)(1) of the Bankruptcy Code.

3 Second, pursuant to the Order of Magistrate Judge Cooke of January 23, 2008 [Doc. 419 at
4 3], the parties in the Trade Secret Litigation were specifically directed that "Documents styled as
5 'objections to evidence' are not allowed, and counsel are cautioned not to file such papers in the
6 future. To the extent counsel object to evidence, those objections may be included in points and
7 authorities, subject to the page limitations prescribed by Local Rule 7-4." Thereupon, specific
8 objections to evidence were made in the points and authorities of Mr. Montgomery's Opposition to
9 the Motion for Sanctions filed by non-party Michael Flynn, Esq., Doc. # 601.

10 Mr. Flynn's response to the Liner Evidentiary objections was required to be filed
11 simultaneously with Mr. Flynn's reply to the Montgomery Parties' Opposition, Doc. # 601.
12 Pursuant to Nevada LR 7-2, therefore, Mr. Flynn's reply was required to be filed by May 27, 2008.
13 See Doc. 603 There is no reason Mr. Flynn should be afforded an opportunity to supplement his
14 reply at this late date. That is particularly true where, as here, Magistrate Judge Cooke has already
15 made her findings and recommendations to the Court. Having failed to so respond, Mr. Flynn has
16 now waived his opportunity to do so.

17 Third, the motion filed by Ms. Klar with the Court sought a determination by the Court with
18 respect to the Liner Evidentiary Objections in connection with the Court's ruling on the Objections
19 filed in response to the findings and recommendations of Magistrate Judge Cooke, Doc. #985.
20 Magistrate Judge Cooke chose not rule on the Liner Evidentiary Objections before filing Doc.
21 #985.
22

23 Ms. Klar and the other non-parties whom Magistrate Judge Cooke recommended be
24 sanctioned, whom have been required to incur substantial legal fees filing Objections in response to
25 Doc. #985, should not now be required to incur additional legal fees to start that process anew. But
26 that will be the onerous burden imposed if (i) Mr. Flynn is given an opportunity now to respond to
27 the Liner Evidentiary Objections, to which the non-parties undoubtedly will have to reply; and (ii)
28 Magistrate Judge Cooke then rules on the Liner Evidentiary Objections and issues a decision to

1 which the non-parties will then be required to file in the event they disagree with Magistrate Judge
2 Cooke's decision or how that decision may impact the Objections currently before the Court.

3 There is no provision in the federal or local rules authorizing the piecemeal ruling by a
4 magistrate judge on motions presented for the magistrate judge's initial determination. Further,
5 there is no provision in the federal or local rules authorizing the filing of a reply to any aspect of a
6 motion after a magistrate judge has issued and submitted to the district court judge a
7 recommendation on that motion and objections have been filed by the persons affected by the
8 magistrate judge's recommendation. Any order permitting the piecemeal ruling on motions or
9 allowing a reply to a motion considered by a magistrate judge, after objections to the magistrate
10 judge's recommendation have been fully briefed, adversely affect the orderly administration of
11 justice and prejudice the rights of the parties. Here, the same result would obtain.

12 **VIII. CONCLUSION**

13 Based upon the foregoing, Ms. Klar requests that this Court vacate the Minute Order issued
14 by Magistrate Judge Cooke on August 7, 2009 [Doc. 1114]. The time for Mr. Flynn to respond to
15 Ms. Klar's Motion for Ruling on Evidentiary Objections, Doc. 1106, has now elapsed as of July 16,
16 2009, and the Motion should stand submitted and unopposed.

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18 DATED this 17th day of August, 2009.

19 JONES VARGAS

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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P.5(b), and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of JONES VARGAS, and that the foregoing document was served via electronic service on August 17, 2009 to the following parties:

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/s/ Barbara Seed
An employee of Jones Vargas